

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ELISEO CRUZ GOMEZ,

Defendant and Appellant.

G039092

(Super. Ct. No. 06HF1386)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE
IN JUDGMENT

It is ordered that the opinion filed October 24, 2008, be modified in the following particulars:

1. On page 12, first full paragraph, add the following to the end of the paragraph: Because we have found Gomez was not prejudiced by the prosecutor's statements, we need not determine whether his defense counsel's performance was deficient. (*People v. Sanchez* (1995) 12 Cal.4th 1, 40-41 ["If defendant fails to show that he was prejudiced by counsel's performance, we may reject his ineffective assistance claim without determining whether counsel's performance was inadequate"].)

The petition for rehearing is DENIED. This modification does not change the judgment.

O'LEARY, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.